IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3518 OF 2005

Jayaram Ambalal Patel ...Applicant

Vs.

The State of Maharashtra ...Respondent

Mr. Parvez I. Bharat for the Applicant.
Ms.S.D.Shinde A.P.P., Mr Jeevan Sonavne with Mr. S.B. Vekhande for the Respondent.

CORAM : A. S. OKA, J.
DATED : JUNE 28, 2005.

P.C.:

1. This is an Application for Anticipatory Bail. The offence is registered under section 406, 420 read with section 34 of the Indian Penal Code. The case of the Complainant is that one Kamlesh who was acting as Commission Agent took large quantity of food grain from him for delivering to various shop keepers and instead of delivering the stock to the shop keepers, he sold the stock and misappropriated amount. The case of the prosecution is that during the investigation of the offence it was transpired that the Applicant is associated with one Damji and they used to store bags of food-grains in the godowns hired by them for further supply to the retailers. The allegation of the prosecution is that in the course of time, the co-accused Kamlesh diverted the food grain

stock to the said godowns. It is the case of the prosecution that during the investigation it was transpired that there was no supply to the retailers by the Applicant because the goods have been misappropriated by the Applicant.

2. The allegation of the prosecution is regarding misappropriation of food-grains worth Rs.65,21,154/-. Reliance is placed by the learned Counsel appearing for the Applicant on the order passed by the learned Magistrate by which the co-accused is enlarged on bail. The said co-accused is Damji. The other Accused Kamlesh is absconding. Perusal of the order shows that the said Damji was in Police Custody and has been interrogated by the Police. However, major recovery could not be made An affidavit in reply has been filed by the Investigating Officer which sets out that the Applicant is not co-operating with him and all that the Applicant is doing is attending the Office of the Investigating Officer for just five minutes for the purposes of making signatures for recording attendance. The extract of Station Diary is also placed on record showing that even during the pendency of this Application, the Applicant attended the Police Station and left the Police Station immediately after recording his presence.

3. The Apex Court has held that gravity of the allegations and need for custodial interrogation are the only two factors which are required to be considered while considering the Application for Anticipatory Bail. Considering the allegation regarding misappropriation of large amount and considering the allegation made by the prosecution about failure of the Applicant to co-operate in investigation, in my view, no case is made out for grant of Anticipatory Bail. Accordingly, the Application is rejected.

4. On prayer made by the Counsel appearing for the Applicant, time of one week is granted to the Applicant to surrender before the Investigating Officer.

JUDGE